SUPREME COURT, U. S.

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No. 933

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

BANGOR AND AROOSTOOK RAILROAD COMPANY, et al., and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, et al., *Petitioners,*

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, *Respondent.*

MEMORANDUM OF RESPONDENT BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

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The railroads' petition for certiorari in this case is the inverse of the union's earlier petition in No. 859, *Brotherhood of Locomotive Firemen and Enginemen* v. *Bangor & Aroostook Railroad Company, et al.* Here the railroads are urging this Court to review the decision below and to hold that the Award of Arbitration Board No. 282 continues in full force and effect after its expiration date unless and until changed through a new effort at collective bargaining between the parties. In No. 859 the union is urging this Court to review the decision below and to hold that the Award of Arbitration Board 282 expired in accordance with its terms so that reductions in firemen jobs affected thereunder do not survive its expiration and additional reductions thereafter are barred. Just as the railroads do not oppose the grant of the petition in No. 859, so the union does not oppose review in the instant case.

In simplest terms, Nos. 859 and 933 are two sides of the same coin. In the first case the union asks this Court to give full force and effect to the statutory expiration clause by restoring the pre-Award fireman manning requirements of the National Diesel Agreement upon the Award's expiration. In No. 933 the railroads ask for the exact opposite, namely the extinction of the expiration clause by continuation of the Award unless and until changed through appropriate bargaining procedure under the Railway Labor Act. In this direct conflict of position, the considerations for and against review by this Court are essentially the same in the two cases and we strongly urge the Court to grant review in both.[1]

While we thus recognize the propriety of review of the basic issue of fireman manning requirements upon the expiration of the Award, we respectfully suggest that there is no warrant for review of question 2 of the Questions Presented by the railroads' petition (p. 3). There the railroads raise the separate and distinct issue whether the BLF&E collective bargaining notices were properly served during the period prior to the expiration of the Award in regard to proposed changes in rules and agreements to become effective *after* the expiration of the Award. The decision of the court below on this issue is clearly correct (see Petition in No. 859, pp. 16a-21a). The railroads had promised Congress that they would bargain within the period of the Award (Petition in No. 859, pp. 13-14) and the union sought no more than to hold them to this promise. This factor alone would render irrelevant the cases cited by the railroads in their petition in No. 933 (pp. 37-38). But reliance on these cases is also misplaced because the bar-

[1] Because neither side questions the need for review, we shall not burden the Court at this point with answers to the contentions on the merits put forth by the railroads in their petition in No. 933 and in their response in No. 859.

gaining requested in those cases sought changes in working conditions *prior* to the expiration date of the agreements rather than, as here, *after* the expiration date of the Award. Accordingly there can be no serious question as to the correctness of the decision below on this point.

Moreover, the grant of review on the ancillary bargaining issue would further postpone bargaining which has now been stymied for over two years. The union initially sought bargaining on the fireman manning issue in November, 1965; the more than two-year delay in bargaining has already immeasurably injured both the union and its members and this delay ought not needlessly be further continued by grant of review on the "prematurity" issue ancillary to the major dispute herein.[2]

* * * * *

The issue presented to the Court in these two cases is of vital importance to the nation's railroads and to the BLF&E and the many thousands of railroad workers it represents. Both sides argue vigorously that the court below has recast the statute in plain disregard of Congressional intention—we contend that Public Law 88-108 has been rewritten by the extinction of its expiration clause and the railroads urge that the Railway Labor Act has been denied all effect. This underlines the basic point made in our petition for certiorari in No. 859 (p. 30): "Comity toward and respect for the prerogatives of a coordinate branch call for the highest Court to render the judgment if a narrow and delicate Con-

[2] The railroads also seek to raise, in question 1(b) of the Questions Presented (Petition in No. 933, p. 3), whether Arbitration Board No. 282 has primary jurisdiction to determine issues as to the meaning and application of its Award. We reserve the right to present to the Court, if it grants review, the facts concerning the belated hour at which this issue was first raised and to suggest to the Court that it may lack or should not exercise jurisdiction to consider and decide this question.

gressional balance on a vital public issue requires judicial revision."

In view of the importance of this case to the nation's railroads and their workers, and the sensitivity of the Congressional-Judicial relationships here involved, we respectfully submit that the petition for a writ of certiorari in No. 859 should be granted and that question 1 in the petition in No. 933 should likewise be granted.

Respectfully submitted,

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